

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

THE DRAGONWOOD CONSERVANCY, INC.,
PLEGUAR CORPORATION,
TERRY CULLEN,

Plaintiffs,

v.

Case No. 16-CV-00534

PAUL FELICIAN,
PHIL SIMMERT II,
JANE AND JOHN DOE(S)
CITY OF MILWAUKEE, and
ABC INSURANCE COMPANY,

Defendants.

**DEFENDANTS' MOTION IN LIMINE NO. 8 –
TO EXCLUDE TONY COTTON AS A WITNESS**

Defendants, by and through their attorney, Tearman Spencer, City Attorney, by Assistant City Attorneys Jenny Yuan and Heather Hecimovich Hough, respectfully submit the following Motion in Limine No. 8 to exclude Tony Cotton as a Witness.

Plaintiffs listed Tony Cotton as a witness on their pretrial report. (Pls.' Pretrial Rpt, Dkt. 139.) Mr. Cotton was not listed on plaintiffs' witness list filed with the court on September 12, 2019. (Dkt. 74-1.)

On October 28, 2020, the undersigned defense counsel emailed plaintiffs' counsel, Attorney Mark Murphy, indicating that defense counsel did not recall Mr. Cotton ever being disclosed as a potential witness. (10/28/20 email exchange, attached as Exhibit 1 to Yuan Decl.) In this email correspondence, defense counsel indicated that if she was mistaken, and plaintiffs had disclosed Mr. Cotton as a potential witness, to please indicate as much. (Id.) Attorney

Murphy responded by asking defense counsel if she had reviewed plaintiffs' witness list filed in September of 2019. (Id.) Defense counsel indicated that she had reviewed plaintiffs' witness list, filed on September 12, 2019, and did not see Mr. Cotton listed. (Id.) Attorney Murphy then indicated that Mr. Cotton is an "authentication witness" to authenticate an email covering a dead crocodilian photo and an email defendants produced "which relates to the proposed 'rehoming.'"

Defendants object to Mr. Cotton as a witness and move that Mr. Cotton be excluded as a witness in this case. He was not timely disclosed as a witness. Any emails that Mr. Cotton is allegedly going to "authenticate" is irrelevant to any issues in this case. Defendants have already filed a motion in limine to exclude evidence or testimony related to efforts to "rehome" the seized animals while they were at MADACC and a motion in limine to exclude evidence or testimony regarding the condition of the animals while at MADACC. Whether plaintiffs' attempted to move the animals from MADACC ("rehome the animals") or the condition of the animals at MADACC has no bearing on the issues remaining for trial.

Dated and signed at Milwaukee, Wisconsin, this 2nd day of November, 2020.

TEARMAN SPENCER
City Attorney

/s/ Jenny Yuan

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